

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MCRC(A) No. 1117 of 2015**

Deepak Kumar Gupta S/o Late Shri Rajaram Gupta Aged About 27 Years R/o H.No. 1193, Dr. Shyama Prasad Mukherjee Road, Gandhi Nagar, Shankar Nagar, Raipur, Teh. And Distt. Raipur Chhattisgarh.

**---- Applicant**

**Versus**

The State of Chhattisgarh Through Police Station Moudahapara, District Raipur Chhattisgarh.

**---- Respondent**

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For applicant - Shri D.K. Gwalre, Advocate.  
For Respondent/State – Shri Vinod Tekam, PL.

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**Hon'ble Shri Justice Goutam Bhaduri**

**Order**

**2/12/2015**

1. This application under Section 438 of Cr.P.C. has been filed by the applicant apprehending his arrest in connection with Crime No.131/2015 registered at Police Station Moudahapara, Raipur (C.G.) for offence punishable under Section 34 (2) of the Chhattisgarh Excise Act.
2. As per the prosecution case on 12/08/2015 a Car bearing registration No.C.G. 04 H/7638 was loaded with 15 cartoon of illicit liquor i.e.135 bulk liters of liquor which was being transported was seized. Driver Sanjeev Sahu was apprehended at the spot and it was disclosed that car belongs to this applicant and therefore offence has been committed.
3. Learned counsel for the applicant submits that bar of Section 59-A of Excise Act does not apply in the instant case as prima facie no case is made out and he relied on the case law reported in **2004 (4) M.P.H.T. 205** between **Naresh Kumar Lahria Vs. State of M.P. and others** and submitted that granting anticipatory bail is not restricted and it can be

granted when Section 34 (2) of the Excise Act is not made out. He further submits that in this case apprehension is on the statement of the co-accused Sanjeev Sahu Driver and the car also does not belong to this applicant. He relied on the case law reported in **2007 (1) C.G.L.J. 8** between **Lakhan Sahu Vs. State of C.G.** and would submit that in the similar circumstances this court has granted anticipatory bail when liquor was seized from the house of the co-accused and the seizure memo does not reflect the presence of the then applicant in that case. Consequently, applying same law in this case since only inculpatory statement of the driver is made against the applicant and applicant is not owner of the car, therefore he cannot be anyway connected with the crime.

4. Learned State counsel opposes the prayer for grant of anticipatory bail and submits that applicant has absconded and no interrogation could be made from the applicant, therefore he is not entitled for grant of anticipatory bail.

5. I have perused the case diary. Case diary would show that police during the investigation found it that respective Car Indica bearing registration No.C.G. 04 H/7638 was purchased actually by present applicant Deepak Kumar Gupta in the name of one Chandreshekhar Prasad and address of the Chandreshekhar Prasad is also not completely available. Perusal of the case diary further shows that despite such evidence applicant could not be interrogated. Primary investigation as per case diary shows that Tata Indica Car was actually under the control of the present applicant for which investigation was necessary. Taking into account the primary evidence and reliance placed on the case law by learned counsel for applicant cannot be applied in this case as in that case recovery of the liquor was from the house of the co-accused which is

not case here and prima facie it was recovered from the car which belong to the applicant. Taking into account the primary evidence, this court is not inclined to grant benefit of anticipatory bail to the applicant.

6. Accordingly, the anticipatory bail application is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE